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U.S. DEPARTMENT OF THE INTERIOR
INDIAN TRUST ASSET REFORM ACT (ITARA) OF 2016
TRIBAL CONSULTATION

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Taken at
HOLIDAY INN RUSHMORE PLAZA
505 N. 5th Street
Rapid City, South Dakota
October 4, 2016

A P P E A R A N C E S

DEB DuMONTIER
(Deputy Special Trustee)

CHERYL ANDREWS-MALTAIS
(Senior Policy Advisor to the Assistant Secretary
Office of the Assistant Secretary - Indian Affairs)

JOHN E. WHITE, MBA
(Deputy Special Trustee - Program Management)

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P R O C E E D I N G S

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MS. DEB DuMONTIER: Thank you for joining us at the Indian Trust Asset Reform Act Tribal Consultation.

At this time I would respectfully request that Chairman Flying Hawk from the Yankton Sioux Tribe open our session.

MR. BOB FLYING HAWK: Let us all gather together this morning and call on our creator as we know and understand him.

(Opening prayer in Native language)

MS. DEB DuMONTIER: Thank you. Thank you for that very inspirational welcome.

And I would offer to the tribal leadership that if you would like to sit closer to see the screen, feel free to move around, but please sit where you are comfortable.

My name is Deb DuMontier. I am the Deputy Special Trustee with the Office of the Special Trustee for American Indians. We are honored to be part of this tribal consultation today in Rapid City.

My tribal affiliation is the Confederated Salish, Kootenai and Pend d' Oreille Tribes of the

1 Flathead Nation located in northwest Montana, a
2 large land-based tribe fully exercising
3 self-governance. I was legal counsel for CSKT for
4 ten years, and I'm a licensed attorney with the
5 State of Montana.

6 For the past 11 years I have been working with
7 OST implementing and leading trust reform. On
8 behalf of the Department of Interior, the staff here
9 today and those located throughout Indian Country,
10 it is a privilege to serve you and to be a partner
11 in the government-to-government relationship.

12 We appreciate the attendance by the tribal
13 leadership, your representatives and the tribal
14 members today. We know that you have a number of
15 priorities.

16 We also appreciate the participation by our
17 federal partners, starting with Cheryl
18 Andrews-Maltais, our Senior Policy Advisor with the
19 Assistant Secretary of Indian Affairs; Mike Smith,
20 our Deputy Bureau Director, Field Operations, Bureau
21 of Indian Affairs from the D.C. headquarters office;
22 and our other federal partners who have joined us
23 today from BIA.

24 There may be members of the media here today.
25 The press is welcome. This is an open meeting.

1 However, we respectfully request that you not
2 disturb the tribal consultations and any questions
3 by the media be reserved until after the conclusion
4 of the session.

5 As you are aware, the Indian Trust Asset Reform
6 Act was signed by the President on June 22nd. As
7 required by the legislation, we have already held a
8 number of tribal consultation sessions across Indian
9 Country, and this is the last consultation,
10 specifically requested by Chairman Harold Frazier
11 and also the Great Plains Tribal Chairman's
12 Association. So thank you for inviting us here
13 today.

14 To briefly recap, we've had one listening
15 session starting August 17th with the Indian Land
16 Working Group. And then we've had eight tribal
17 consultations, and this is the ninth consultation.

18 When completed, the transcripts -- and we do
19 have a court reporter here today to take your
20 comments. But when the transcripts are completed,
21 they are being posted and available for review on
22 our public website.

23 The comment period has also been extended to
24 this Friday, October 7th for your written comments.

25 This legislation is an important step in our

1 commitment to strengthening tribal sovereignty and
2 decision making. It also gives us an opportunity to
3 evaluate what has worked and what could be improved
4 within the systems and processes implemented as part
5 of the creation of OST. You are a critical part of
6 that evaluation.

7 Today's consultation focuses on Title III of
8 the Indian Trust Asset Reform Act, and you'll hear
9 us refer to it as ITARA.

10 The law provides that the Secretary will
11 identify all non-monetary management functions
12 currently being conducted by the Office of the
13 Special Trustee. Therefore, we are here to present
14 those functions and consult with you on where these
15 functions might be transferred to other entities
16 within Interior. And I, in a few moments, will be
17 presenting a brief power point on Section 304.

18 The law also provides that within 18 months the
19 Secretary must ensure that Indian trust property
20 appraisals and valuations are administered by a
21 single entity within the Department. So today we
22 are seeking feedback on that transition. And John
23 White will be presenting an informative power point
24 on Section 305a and some suggestions on how this
25 might be accomplished. But we are looking forward

1 to the ideas that you may have.

2 Cheryl Andrews-Maltais will be presenting a
3 presentation regarding the draft minimum
4 qualifications for individuals to prepare appraisals
5 and valuations of Indian trust property. The
6 proposed rule was published on Thursday,
7 September 22nd, and comments are due by
8 November 21st, 2016.

9 In summary, the rule provides that when an
10 appraiser meeting these minimum qualifications
11 prepares an appraisal of Indian property and the
12 user of the appraisal intends to forego Departmental
13 review, the Department will be able to rely on that
14 appraisal without further review. You, as the trust
15 beneficiary, can submit the appraisal to the
16 Department for use in a trust property transaction,
17 express your intent to waive the review, and no
18 Departmental approval of that appraisal will be
19 required.

20 We are interested in your views on the proposed
21 rule that establishes the minimum qualifications.
22 And we are also interested in your views on the
23 process by which the Department would verify that an
24 appraiser meets those qualifications. That and
25 other questions today will be presented to you.

1 And finally, we are interested in your views on
2 the establishment of an Under Secretary for Indian
3 Affairs. ITARA provides that the Secretary may
4 establish an Under Secretary for Indian Affairs who
5 would report directly to the Secretary. We want to
6 hear your thoughts on this provision.

7 So we are anxious to hear your comments and
8 suggestions. We have four short presentations, and
9 in general we want to save time to hear from you.

10 So starting with my presentation on Title III
11 Section 304 of the Indian Trust Asset Reform Act:
12 Improving Efficiency and Streamlining Processes.
13 First, in addition to John White, I would like to
14 acknowledge the senior OST leadership here today.
15 We have Doug Lords who is our Deputy Special Trustee
16 acting for Field Ops; Rob Winter, our Director of
17 Trust Services and Acting Special Trustee for Trust
18 Services; Mel Burch, Original Trust Administer; Tim
19 Lake, the Regional Trust Administer for this region;
20 Jennifer Jolola, also the Deputy for this region.
21 And we have our appraisers here today from the
22 region, Jim Green and Jay Vance. So we have the
23 subject matter experts here to answer your
24 questions.

25 I'd also like to acknowledge our staff for

1 getting this room and the binders together, a big
2 shout out to them. Thank you.

3 For those of you that have a binder, my
4 presentation, this Power Point is on Tab 5 if you
5 would like to follow along. The presentations are
6 also posted on the OST/ITARA website.

7 Again, Section 304 requires the Secretary of
8 the Interior to identify non-monetary functions that
9 OST performs, which is an opportunity for us to
10 reflect upon our current practices and to hear your
11 recommendations regarding this section of the Act as
12 we chart the path forward together with Indian
13 Country. It is also an opportunity to reflect on
14 the Department's progress in trust reform, and the
15 next few slides will provide you a brief overview
16 and some context of the Office of the Special
17 Trustee.

18 Why was OST created? The American Indian Trust
19 Fund Management Reform Act of 1994 created OST in
20 response to the strong demands for accountability
21 and transparency for Indian trust funds. The
22 primary purpose of OST was to improve management of
23 Indian funds and assets held in trust by overseeing
24 and coordinating trust reforms within the
25 Department. However, in 1996 OST's role expanded by

1 Secretarial Order to include operational
2 responsibility for financial trust management,
3 including accounting, investing, disbursement to
4 individual Indians and Tribal beneficiaries. OST
5 was later delegated the functions of appraisal of
6 Indian trust lands and historical trust accounting.

7 This next slide demonstrates the complexity of
8 our work, not only in the trust funds managed but
9 the number of accounts managed. Implementing a
10 modern, centralized fiduciary trust accounting
11 system, OST currently manages approximately
12 \$5 billion. OST receives and disburses 1.7 billion
13 each year. With a 99.99 percent accuracy rate, OST
14 processes, on average, more than 40,000 financial
15 transactions each day, totaling more than 10 million
16 transactions annually.

17 As the pie charts illustrate, the greatest
18 balance, over 80 percent, is held in 3,300 trust
19 accounts for 250 tribes, invested in individual
20 portfolios to meet cash-flow objectives of the
21 respective tribe. Approximately \$845 million or
22 17 percent of the trust funds is invested in a
23 pooled account for over 400,000 IIM account or
24 Individual Indian money account holders, which is
25 99 percent of the total accounts managed.

1 Since the settlement of Cobell, OST has
2 received an unmodified opinion on IIM financial
3 statements conducted by an independent major
4 accounting firm for three consecutive years. In
5 addition, OST developed a strong focus on
6 beneficiary services to ensure that our tribes and
7 individual beneficiaries receive the customer
8 service necessary to empower them with the knowledge
9 to make informed decisions about their trust assets.

10 Congress requested identification of all
11 functions other than collection, management and
12 investment of Indian trust funds that OST performs,
13 specifically those functions that affect or relate
14 to management of non-monetary trust resources, which
15 is the Appraisal Service Program. For full
16 transparency, we've identified our functions based
17 on the budget justification for OST programs. So
18 you'll see here we have identified the collection
19 management and investment functions of OST.

20 In addition, OST has developed a comprehensive
21 fiduciary trust model to enhance beneficiary
22 services and accurately account for the Indian trust
23 funds so some of the [funds] are interrelated with
24 the monetary and non-monetary resources. The
25 asterisk that you see on the bottom denotes the

1 functions, and you'll see our functions that have,
2 in the middle column that have asterisks identified
3 by them, and those are providing the functions that
4 impact other Department of Interior offices, bureaus
5 or the tribes. Now, you will find a description of
6 each of these functions provided in the materials
7 that you have today as well, so there's a more
8 detailed description in your binder. There's also
9 an Accomplishments Brochure of OST's accomplishments
10 through the years as well.

11 This slide Focused Fiduciary Management
12 illustrates some of the reforms modernizing the
13 trust asset management. I mentioned some of the
14 forms already, a centralized fiduciary accounting
15 system, a centralized lockbox for collection,
16 receipting and posting, and the individual
17 structured Tribal portfolios.

18 In addition to the improved financial system
19 and maximized service delivery to the beneficiaries
20 displayed on this slide, OST established the Office
21 of Trust Records and the American Indian Records
22 Repository, the AIRR. The AIRR is located in
23 Lenexa, Kansas. It's a dedicated underground
24 storage facility used for the proper safeguarding
25 and storage of fiduciary trust records. This is a

1 major accomplishment. The AIRR has specially
2 trained staff dedicated to protecting very important
3 documents for Indian Country. For the tribal
4 leaders and representatives, if you are interested
5 in visiting the AIRR, please let us know so we can
6 make those arrangements. And also if you are in the
7 Albuquerque area please let us know and we would
8 give you a tour of our OST headquarters west office.

9 OST has enhanced beneficiary services with our
10 fiduciary trust officers. And Roger Campbell is
11 here today, and staff available to assist
12 beneficiaries either on tribal lands or in close
13 proximity to those lands, to partner with the Bureau
14 of Indian Affairs, the Office of Natural Resource
15 Revenue, the Bureau of Land Management and other
16 federal and state agencies and tribes in addressing
17 Indian matters on a regional and local level.

18 OST also operates a toll-free Trust Beneficiary
19 Call Center with expanded hours of service in direct
20 support of beneficiary calls and inquiries providing
21 consistent, timely and accurate information. The
22 TBCC has responded to more than 1.8 million calls
23 since 2004, with a first-line resolution rate of
24 94 percent, meaning when a beneficiary calls the
25 TBCC, their inquiry or request is resolved the

1 majority of the time with that first phone call.

2 The industry standard is less than 50 percent.

3 The OST field operations' dedicated and direct
4 service to beneficiaries complements the work of our
5 federal and tribal partners so they may remain
6 focused on their mission and important stewardship
7 of the natural resources and land.

8 In addition, our field staff aggressively looks
9 for account holders with unknown addresses through
10 outreaches, interagency collaboration, and searches
11 over 7,000 electronic databases. Thus far, we have
12 found more than 330,000 account holders and
13 distributed more than \$386 million. The success
14 stories are awesome and in some cases drastically
15 changing lives. This work has also helped the Land
16 Buy-Back Program for Tribal Nations to mail offers
17 out to tens of thousands of Indian owners of
18 fractionated land.

19 In addition to providing leadership and
20 expertise in a wide variety of Indian trust-related
21 subjects, our Fiduciary Trust Officers and Regional
22 Trust Administrators provide financial empowerment
23 training to promote economic self-sufficiency.

24 OST also provides beneficiaries with statements
25 of their accounts, including funds activity and real

1 property assets, to help increase financial
2 awareness and to inform individuals and tribes of
3 their interests.

4 OST's ongoing initiatives to streamline and
5 automate processes are based on best practices and
6 the lessons we've learned with our close work with
7 tribal leaders and communities. Trust resource and
8 asset management in Indian Country must not be
9 stagnant and trust reform should always be a work in
10 progress.

11 OST is developing 21st Century tools to enhance
12 services such as on-line banking for IIM accounts.
13 We are enhancing the Strataweb which is how tribes
14 currently access tribal account information.

15 OST continues work on probate reform
16 initiatives and provide support for Indian estate
17 planning services to assist Indian landowners with
18 understanding the American Indian Probate Reform
19 Act. We are reducing our carbon footprint and
20 promoting cost-effective efficiencies with
21 automating trust processes and digitizing trust
22 records.

23 OST will continue to support the Cobell
24 settlement and the Land Buy-Back Program with our
25 expertise and innovation with appraisal evaluations,

1 outreach and account services. And of interest for
2 tribes who are compacting trust programs, OST has
3 developed, with the assistance of nine pilot tribes
4 and consortiums, an on-line evaluation tool to
5 streamline the evaluation process that is less
6 burdensome on tribes than the current evaluation
7 process. And the video that you may have seen
8 earlier that was playing was regarding our tribal
9 methodology project, and it may meet some of the
10 Title II requirements regarding evaluations.

11 Benefits to separation of duties: We know that
12 OST's value comes not from its position within a
13 particular office at the Department but rather from
14 its singular focus and discrete duties related to
15 the fiduciary trust responsibility. Moreover, these
16 duties must continue, no matter in which office the
17 functions are located, to maintain the level of
18 service Indian Country deserves.

19 The core trust accounting functions, providing
20 direct beneficiary services and maintaining internal
21 controls were created and established separately
22 with the intention of operating independently of the
23 general trust operations. This structure was
24 created to avoid conflicts of interest, co-mingling
25 of resources, re-direction or re-prioritizing of

1 other interests to ensure the accountability and
2 delivery of services. The separation provides a
3 dedicated and direct approach to managing Indian
4 financial trust assets in accordance with sound
5 fiduciary trust principals and practices.

6 So in conclusion, that was a quick overview of
7 OST and our functions. The accomplishments again
8 are located in your brochure and also posted online.

9 We look forward to working with all of you to
10 implement the 2016 Indian Trust Asset Reform Act and
11 welcome the opportunity to dialogue with you to
12 develop a strong plan to serve Indian Country.

13 We have also provided links to various
14 documents and reports such as our annual audits and
15 other background material for your reference on our
16 website.

17 And again here our materials all say, "Comments
18 received by September 30th," but that has been
19 extended to this Friday, October 7th.

20 In the meantime, the OST staff continues to
21 work hard to serve Indian Country and remain focused
22 on our mission to honor our trust responsibilities
23 with a beneficiary focus and participation while
24 providing superior stewardship of trust assets for
25 the proper discharge of the Secretary's trust

1 responsibilities.

2 So next I'm going to turn the podium over to
3 Mr. White to discuss appraisals, Section 305(a).
4 Thank you.

5 MR. JOHN WHITE: Thank you, Deb.

6 My name is John White. I'm the Deputy Special
7 Trustee for Program Management. I've been with the
8 government for 27 years. The first 12 years was
9 with the Bureau of Indian Affairs. The last 15
10 years, coming up on 15 years, has been with OST.

11 I'm an enrolled member of the Sisseton Wahpeton
12 Oyate. I was born and raised on the Lake Traverse
13 Indian Reservation. And it's been -- the last two
14 years I've had the opportunity to work with the
15 Office of Appraisal Services in providing leadership
16 and direction to that program.

17 Section 305(a) requires that appraisals and
18 valuations of Indian trust property be administered
19 by a single bureau, entity, or other administrative
20 entity within the Department.

21 The Appraisal Services Program has had a little
22 checkered history. They first were with the Bureau
23 of Indian Affairs. In 2002 they came to the Office
24 of Appraisal Services. In 2005 to 2009 they were
25 transferred to what was called the Appraisal

1 Services Directorate. And then in 2010 they came
2 back to the Office of Appraisal Services. So they
3 have been transferred before.

4 I think it's important when we talk about the
5 single entity we also have an understanding of what
6 the current process is. We've developed this
7 five-step linear process to explain what that
8 process is.

9 The first two steps of the process are
10 performed by the Bureau of Indian Affairs or the
11 Tribe if they've contracted or compacted that real
12 estate services function where they requested
13 appraisal from the Appraisal Services Program.

14 The Appraisal Services Program then prepares an
15 appraisal report. And upon completion of the
16 report, they do a technical review. If it needs a
17 technical review, then they provide the report back
18 to the requester for the requester to complete the
19 report -- or the activity that required the
20 appraisal report to begin with.

21 Incidentally, this process is a process also
22 utilized by the Office of Valuation Services in the
23 department which conducts appraisals for all public
24 land. So this isn't just an OAS or an Office of
25 Appraisal Services process, the Office of Valuation

1 Services uses something similar when they do
2 appraisals for the Fish & Wildlife Service or the
3 BLM or what have you.

4 There's three entities that are primarily
5 responsible for appraisal services activity on
6 Indian lands. Obviously the main one is the Office
7 of Appraisal Services. They're responsible for all
8 appraisal activity. However, there are instances
9 where a mineral estate is involved. Or there's
10 instances where timber is involved, and in that case
11 the Bureau of Indian Affairs provides a timber
12 appraisal to Appraisal Services. If minerals are
13 involved, the Division of Minerals Evaluation
14 provides a mineral estate appraisal. That
15 information is then given to Appraisal Services for
16 them to complete the appraisal report.

17 Now, granted, what I wanted to demonstrate here
18 is they're across different organizational
19 boundaries within the department. So is that
20 complex? No. But it could be if priorities are
21 different amongst those different entities. And I
22 think that was part of the genesis of having a
23 single entity to curtail any of those conflicts.

24 On this slide I wanted to present two things
25 primarily, and that's the appraisal volume that

1 Appraisals has completed in FY-2015. We've
2 completed 3,099 appraisal requests in our Operations
3 Division. That's more the norm of what you would
4 consider what appraisals are. Those are the
5 appraisals for land sales, right-of-way,
6 partitionments, those types of activities.

7 We've also completed 11,873 appraisal requests,
8 but that was for the Land Buy Back. And that was
9 primarily because of a mass appraisal system that we
10 use to appraise like properties in mass quantities
11 so that we can meet the demands of the Land Buy-Back
12 Program for tribal nations so they can complete
13 their offers.

14 Again, this is just a pie chart of the 3,099
15 appraisal requests that were completed in 2015.
16 2,850 of those requests were completed exclusively
17 by OAS without input from DME or BIA Forestry.

18 78 required BIA Forestry timber appraisals.
19 171 required mineral appraisals from the Division of
20 Minerals Evaluation. Now, it's important to
21 understand all of the appraisal -- the
22 responsibility to conduct appraisals is with the
23 Office of Appraisal Services. There are just those
24 occasions where we have to get additional
25 information from outside entities.

1 Now, Section 305(a) talks about the single
2 entity, and that is what's important to me. That's
3 the whole importance of this section. So what's
4 envisioned is the authorities, the Office of
5 Appraisal Services, what they have; the Division of
6 Minerals Evaluation, what they have; and what BIA
7 Forestry has, in the appraisal activity process we
8 would transfer to a single entity.

9 Then the next step would be who should
10 administer that entity. We came up with seven
11 options. They're in no priority order, and we'll go
12 over those.

13 The first one is the Office of the Secretary;
14 the Office of the Special Trustee for American
15 Indians; the Assistant Secretary for Policy,
16 Management and Budget, that's where the Office of
17 Valuation Services resides. Or it could be within
18 the Office of Valuation Services. The Assistant
19 Secretary - Indian Affairs; the Bureau of Indian
20 Affairs where appraisal services resided prior to
21 2002, and the "other". The "other" being if you had
22 any ideas or suggestions other than these entities,
23 you know, feel free to provide those suggestions.
24 These were just for discussion purposes where we
25 believe OAS or the single entity could be

1 administered.

2 One thing I wanted to mention, that I failed to
3 mention on one of the slides, the activity that
4 Appraisal Services has, what they do, in 2015 all
5 the appraisals that, you know, from the Land Buy
6 Back to the operations, they had a cumulative value
7 of over \$2 billion. And the activity that the
8 Office of Appraisal Services currently does by far
9 exceeds any appraisal activity of any other federal
10 entity responsible for appraisal services. So the
11 Appraisal Services is really the backbone in being
12 able to consummate a lot of trust transactions. So
13 the importance of a single entity and who should
14 administer the single entity we really need to give
15 some thought to.

16 So I provided, you know, a brief history of
17 OAS, the current process, which is more complex than
18 the five-step process but it gives you an
19 understanding of what, a linear example of what it
20 should look like and how it should work.

21 We talked about the authorities of the DME and
22 BIA Forestry and OAS in providing appraisal services
23 to Indian Country. And we discussed the single
24 entity and who could administer the single entity.

25 We have two appraisers here. Deb introduced

1 Jim and Jay. They'll be able to answer any
2 technical questions when it's time for the question
3 and answer.

4 If there's any questions on the slides that I
5 presented, at the conclusion of the next
6 presentation I'll be happy to answer them.

7 And with that, I'll turn it over to our next
8 presenter, Cheryl.

9 MS. CHERYL ANDREWS-MALTAIS: Good morning. My
10 name is Cheryl Andrews-Maltais, and I'm the Senior
11 Advisor to the Assistant Secretary on Indian
12 Affairs. And I've been in this position now since
13 November of last year. However, prior to that I was
14 the former chairwoman of my tribe, the Wampanoag
15 Tribe of Gay Head Aquinnah in Massachusetts, as well
16 as the former tribal historic preservation officer
17 for my tribe as well before being elected to
18 chairwoman.

19 And thank you very much for hosting us here.
20 And thank you very much, Chairman, for the end
21 location that you provided for us.

22 We're here today to basically solicit your
23 feedback, your comments and your ideas with regard
24 to how best to develop these areas and how best to
25 meet Indian Country's needs with regard to these

1 changes based upon the ITARA.

2 And the Indian Trust Asset Reform Act, as far
3 as the sections that I'll be addressing, is 305(b),
4 which are the minimum qualifications for appraisers.
5 Now, this is an area that has generally been housed
6 within the federal services. However, at this point
7 underneath the act it allows tribes to exercise
8 sovereignty and to take on this responsibility on
9 their own without a, the Department of the Interior
10 or the Secretary having to approve appraisals in
11 certain circumstances. Basically in Section 305,
12 Section (b), Minimum Qualifications: "Not later than
13 one year after the date of enactment of this Act,
14 the Secretary shall establish and publish in the
15 Federal Register minimum qualifications for
16 individuals to prepare appraisals and valuations of
17 Indian trust property. So as of June 22nd of 2017
18 we'll need to have this report in.

19 In Section C, Secretarial Approval, one of the
20 questions is, "In any case in which an Indian tribe
21 or Indian beneficiary submits to the Secretary an
22 appraisal or valuation that satisfies the minimum
23 qualifications described in Subsection (b) and that
24 submission acknowledges the intent of the Indian
25 tribe or beneficiary to have the appraisal or

1 valuation considered under this section, the
2 appraisal or valuation shall not require any
3 additional review or approval by the Secretary and
4 shall be considered to be final for the purposes of
5 effectuating the transaction for which the appraisal
6 or valuation is required." And that in itself is a
7 large step for Indian Country for tribes to be able
8 to take this on.

9 This part applies to anyone preparing or
10 relying upon an appraisal of Indian property. What
11 are the minimum qualifications for qualified
12 appraisers? And there are standards now and the
13 standards that are currently utilized by the people
14 in the federal services that are providing it are to
15 ensure and protect the interests of the tribe, the
16 interest of the individual and the interest of the
17 community to ensure that the appraisals provided are
18 true and give true value to the property that is
19 being appraised for transaction. Our ideas have
20 been, A: That the appraiser must hold a current
21 Certified General Appraiser license in the state in
22 which the property appraised is located, or B, the
23 appraiser must be in good standing with the
24 appraiser regulatory agency of that state in which
25 the property is appraised and/or located. And C,

1 the appraiser must comply with the Uniform Standards
2 of Professional Appraisal Practice or USPAP rules
3 and provisions applicable to appraisers, including
4 but not limited to competency and ethics
5 requirements. And this we're looking for you to
6 guide us in such a way that your guidance will help
7 us help you provide the best appraisals and the most
8 effective way that tribal relations can determine.

9 Some of the questions that we had put forward
10 to us is, "Must I submit an appraisal to the
11 Department?" Yes, you do have to submit appraisals
12 for transactions that require Secretarial approval
13 under other parts of Title 25 and Title 43 of the
14 CFR, for example leases, rights-of-way. And the
15 Court of Federal Regulations' example is if the
16 Secretary's approval is needed, appraisals and
17 evaluations are needed.

18 Another question is, "Will the Department
19 review and approve the appraisal?" And this is
20 where it deviates, and we would like to make sure
21 that we have good minimum standards because
22 appraisals will not be needed if the submission
23 acknowledges the intent of the Indian Tribe or
24 individual Indian not to require Departmental review
25 and approval, or (2), the appraisal was completed by

1 a qualified appraiser meeting the rule's
2 requirements and (3), no owner of any interest in
3 the Indian property objects to the use of the
4 appraisal without Departmental review and approval.

5 However, in the case -- there are cases that
6 the approvals will require Secretarial approval, and
7 it's yes if any of the criteria above are not met or
8 if the appraisal was submitted for the purchase at
9 probate under 43 CFR which is Indian probate
10 hearings and proceedings, or underneath the Land
11 Buy-Back Program for Tribal Nations, or legislation
12 requiring the Departmental review and approval of
13 the appraisal.

14 Another question that we're posing or has been
15 posed to us as well is, "What happens if the Indian
16 tribe or individual does not agree with the
17 submitted appraisal?" And if the Indian tribe or
18 individual does not agree with the submitted
19 appraisal, the Indian tribe or individual may choose
20 to not use the appraisal conclusions or findings and
21 request the evaluation from the Department.

22 Is the Department liable if it approves a
23 transaction for Indian property based on an
24 approval (sic) submitted by a qualified appraiser?
25 And the Department is not liable for any deficient

1 or inaccurate appraisal or valuation it did not
2 review or approve. And that's why it's so important
3 to have the credentialing at minimum standards so
4 that you can rely on these approvals. And even if
5 the Department approved a transaction for Indian
6 property, including but not limited to a lease,
7 grant, sale or purchase, based upon an appraisal
8 prepared by a qualified appraiser.

9 Questions that we would like you to consider
10 and also give us your feedback on are: Do any
11 tribes grant Certified General Appraiser licenses
12 similar to those granted by states? And if so, is
13 the license limited to appraisals and valuations
14 done on property within the tribe's jurisdiction?
15 And, two, are the minimum qualifications appropriate
16 for appraisals and valuations of timber, minerals or
17 other property separate from appraisals and
18 valuations of real property? And if not, what
19 qualifications would be better suited to those
20 appraisals and valuations? Because evaluating
21 minerals and timber obviously are going to be
22 significantly different than real property.

23 And, three: Is there a way to allow for the
24 Department to verify an appraiser's qualifications
25 without requiring the qualifications to be submitted

1 with each appraisal and still ensure that the
2 appraiser is qualified at the time the appraisal is
3 submitted? For example, there have been no changes
4 in the appraiser's qualifications such as a loss of
5 license? And, again, establishing those minimum
6 qualifications is going to be critical for tribes if
7 they choose to assume the responsibility and want to
8 go down the path of having, not requiring the
9 Secretary's approval on every transaction. And it's
10 critical that tribes understand that you want to be
11 able to rely fully on the appraisals when it's
12 appropriate and not have to worry that something can
13 come back that is not protecting of the tribe, the
14 tribal member or the government itself.

15 The next section is 303, and that's the
16 position of the Under Secretary. Within the law it
17 was provided that there may be an Under Secretary
18 position that could be created in order to satisfy
19 some of the requests that Indian Country has been
20 making over the years. And what we'd like to do is
21 ask Indian Country where you'd like to see that
22 position, how you'd like to see that position
23 structured, what types of roles or responsibilities
24 it would have and what functions and duties you'd
25 like to see underneath that position.

1 And basically the ITARA Section 303, which is
2 this new law provides for the establishment of the
3 position, the Secretary may establish in the
4 Department the position of Under Secretary for
5 Indian Affairs, who shall report directly to the
6 Secretary.

7 B, the appointment shall be appointed by the
8 President, and with the advice and consent of the
9 Senate.

10 The duties: In addition to any other duties
11 directed by the Secretary, the Under Secretary shall
12 coordinate with the Office of Special Trustee to
13 ensure an orderly transition of the functions of OST
14 to one or more appropriate agencies, offices or
15 bureaus within the Department; to maximize to the
16 extent practical, supervise and coordinate
17 activities and policies of the BIA with activities
18 and policies of the BoR, BLM, ONRR, NPS and FWS and
19 to provide for regular consultation with Indians and
20 Indian tribes that own interests in trust resources
21 and trust fund accounts.

22 It also continues on for personnel provisions
23 and appointments. The Under Secretary may appoint
24 and fix the compensation of such officers and
25 employees as the Under Secretary determines to be

1 necessary to carry out any function transferred
2 under this section. And requirements are: Except
3 as otherwise provided by law, any officer or
4 employee described in Paragraph 1 shall be appointed
5 in accordance with the civil service laws and the
6 compensation of such an officer or employee shall be
7 fixed in accordance with Title 5 of the U.S., United
8 States Code, and in appointing or otherwise hiring
9 any employee, the Under Secretary shall give
10 preference to Indians. Which means if this position
11 is adopted and defined as Indian Country would like
12 to see it, keep in mind who you think would be best
13 to serve these and make those recommendations as
14 well.

15 Here is the organizational chart as it stands
16 now. And as you can see, we've put -- we don't have
17 any place for it. But we've identified the
18 Assistant Secretary's position right now. And so
19 this doesn't -- the law doesn't necessarily replace
20 the Assistant Secretary, nor does it prescribe that
21 it's mandatory. It's just an option that's there
22 for Indian Country to determine whether or not it's
23 something that they would like to pursue, where
24 they'd like it, how they'd like it structured and
25 what roles and responsibilities should be contained

1 within that position.

2 And with that, I'd like to close my
3 presentation and also open it up for any questions,
4 comments, ideas, suggestions. The one thing that we
5 would like to ask is that anyone that does stand to
6 speak, whether or not you'd like to speak at the
7 microphone, if you're more comfortable here at the
8 lecturn, I know it's always good for that, as well
9 as if you could identify yourself, your title and
10 tribal affiliation, that would help so that we can
11 record your comments appropriately so that we would
12 be able to respond to them in good order.

13 So thank you very much for your time and your
14 attention.

15 MR. JOHN YELLOW BIRD STEELE: Ladies and
16 gentlemen, my name is John Yellow Bird Steele,
17 President of the Oglala Sioux Tribe and Chairman of
18 the Great Plains Tribal Chairman's Association.

19 First off, I'd like to thank you for holding
20 this consultation session for us. I know that we
21 were not considered in the first round, and we
22 couldn't make it to Sioux Falls. So thank you.

23 I'd like to invite -- welcome all of you that
24 have come from different areas to the sacred Black
25 Hills. The 1868 Treaty says, "Til the grass stops

1 growing and the rivers stop flowing, the Black Hills
2 belong to the Sioux Nation." In 1980 the United
3 States Supreme Court's words were, "The most ripe
4 and rank case in the history of the United States,
5 the illegal taking of the Black Hills." And we just
6 can't seem to get any one of you long knives to sit
7 down to discuss a settlement or whatever of that
8 issue. We would expect that you would do like today
9 and try to meet with us to settle it.

10 But today we're meeting on a congressional act
11 that's been passed and signed by the President. And
12 first off I would like to say that this trust
13 reform, in the legislation it says treaties. And
14 very basically, that's where trust comes from, the
15 treaties. And trust is not created and it can't be
16 defined by the judiciary or administrative agencies.

17 The act requires you to establish an Indian
18 Trust Asset Management Demonstration Project.
19 You've given us sort of an overview of how you plan
20 to do this. And we view this as being of utmost
21 importance to our tribe's future relationship with
22 the United States Government.

23 And it's been discussed in the past that the
24 government all the time paints this Indian picture
25 with one brush, one size fits all. You're doing the

1 same damn thing here.

2 We would like to recommend -- because in our
3 Great Plains area we all have treaties except the
4 Poncas. They were recognized in the early '90s.
5 But we Great Plains Tribes all stand on those
6 treaties with the United States Government. As I
7 said, the Act does mention treaties and the large
8 portions of land that the sovereign nation of tribes
9 have given up. It goes on to mention that the
10 United States Government has benefited for centuries
11 from the treaties.

12 And in your positions you know that that
13 rancheria is quite unlike Pine Ridge. Not only do
14 we have that treaty until the grass stops growing
15 and the rivers stop flowing with the United States
16 Government where they made promises in every area,
17 that a day's life in Pine Ridge is quite unlike any
18 rancheria or anywhere else, that the tribal
19 government has a full hundred percent responsibility
20 for everything, quite unlike other tribes. If the
21 state police come onto Pine Ridge to do any
22 business, we will have them arrested, legally so.
23 We've got a hundred percent responsibility for all
24 physical infrastructure. For the conduct of life
25 itself in all areas, civil and criminal, full

1 hundred percent responsibility. Nobody takes this
2 into account.

3 That stupid ITBC, the Intertribal Budgeting
4 Council, those people, I met with them here in Rapid
5 City. They held their meeting here. When I shook
6 their hands and they went by, the vast majority of
7 them could not seem to understand, empathize or
8 realize what a day's life on Pine Ridge is like,
9 what a full hundred percent responsibility is. And
10 they're making up the BIA's budget. And you're
11 going to give them the savings?

12 I think this new department should itself be
13 departmentalized with different functions. Those
14 smaller reservations with other jurisdictions
15 helping them in everything, no other jurisdiction is
16 helping us in any manner. Need the United States
17 Government's trust to our tribes in the Great
18 Plains. No one seems to look at that. We're just
19 one brush-painted Indian picture across the whole
20 United States.

21 Why do we have to live in third-world
22 conditions when we have a treaty and the United
23 States benefited, and they say for centuries, from
24 those treaties? It's uncalled for.

25 We have so many do-good organizations on Pine

1 Ridge. I can't begin to count them. And they are
2 growing. They're building. And we can't build.
3 And they're going around patching roofs or getting
4 organizational sports for our youth, and I need
5 those people to take background checks. The BIA was
6 cited for sexual abuse in the school systems, and I
7 don't trust them coming onto our reservation
8 establishing, saying we don't have any authority
9 over them. Well, we do. I may have to prove it.

10 But we're different. The creation of this new
11 department needs to be incorporated with the Bureau
12 of Indian Affairs. The United States Government,
13 without consultation, took education away from the
14 Bureau of Indian Affairs. Where do we go now to get
15 some decisions made? Albuquerque? Minneapolis?

16 They took law enforcement away from the Bureau.
17 Where do we go to get decisions on that?

18 I know they had to create the Office of Special
19 Trustee, but that was completely separated. It
20 looks like we're going to try and get those two
21 outfits, the Office of Special Trustee and the
22 Bureau of Indian Affairs, if we can integrate them
23 here somehow. Because back home we only have
24 physically present the Bureau of Indian Affairs. We
25 used to go there and be able to get answers and all

1 of these other departments. We can't do that now.
2 So the Great Plains has taken the position that we
3 want those functions back with the Bureau so we can
4 have someone we can go to that can get us some
5 answers and make some decisions.

6 It's very hard to affect locally our own law
7 enforcement when we have so many God darn
8 requirements we gotta meet, hoops we gotta jump
9 through, decisions that have to be made before we
10 can do something. It's not very effective.

11 And so in creation of this new department we'd
12 like it, some physical presence on the reservation
13 and incorporated with the Bureau of Indian Affairs
14 so we can get some decisions.

15 And I can't seem to stress enough that trust
16 comes from the treaties. This is a very new
17 demonstration project that is being planned. I know
18 that tribes can opt to be in or out to any degree
19 the different functions of this trust. They can
20 take over some of it.

21 But I very much would like to address those
22 savings. And let's have someone look into the needs
23 that are out there now. From all the Great Plains
24 with our treaties, I think we have the most needs.
25 Well, Navajo is up there with us. We do not belong

1 to NCAI, even though we were the ones that
2 established that organization. It's been taken over
3 by state-recognized tribes, small tribes, casino
4 dollars in their pockets. Us large land-based
5 treaty tribes have our own organization. It's sort
6 of new but it's called COLT, the Council of Large
7 Tribes. Our needs are different, and this we try to
8 impart to all the federal departments.

9 We just had a meeting in Washington here. And
10 I don't know if any of you even knew about it. But
11 that's Navajos and most of the Rocky Mountains and
12 Great Plains areas.

13 On Pine Ridge I have an agreement with the
14 State of South Dakota over their fee patent lands
15 within the reservation. They let the tribe have the
16 say-so and approval authority over any mining. We
17 have all the taxes on fee patent land, whatever, an
18 agreement with the State of South Dakota. So we
19 have jurisdiction over 3 million acres of land. And
20 where do we look to? We have the authority to go to
21 anywhere, Cuba, Russia, Switzerland, England. But
22 we recognize this treaty. We live within the
23 boundaries.

24 I'm a Vietnam veteran. I stand up for the
25 flag. My friends died in Vietnam for the freedoms

1 that flag represents.

2 So we get the treaties, and we want this
3 relationship with you long knives to be better. We
4 think we need more consultation as this is
5 developed, this new branch or whatever we want to
6 call it with this new Under Secretary. We need to
7 be consulted more as it develops.

8 We thank you for coming this time on the
9 initial concept.

10 And I was told not to take too much time
11 because other people want to talk. So thank you.

12 MS. CHERYL ANDREWS-MALTAIS: Thank you very
13 much, President Steele, for your comments, your
14 thoughts, your ideas and your guidance. And we
15 truly appreciate your heartfelt sentiment and
16 reminding us of our responsibility to the large
17 land-based tribes.

18 MR. ROGER TRUDELL: Roger Trudell, Chairman,
19 Santee Sioux Nation in Nebraska.

20 And I need clarification I guess on some of the
21 things that were presented, and that is with the
22 Under Secretary position opposed to the Assistant
23 Secretary, Bureau of Indian Affairs. Just generally
24 speaking, an Under Secretary would have more
25 authority than the Assistant Secretary of the Bureau

1 of Indian Affairs? Is this correct or not correct?

2 MS. CHERYL ANDREWS-MALTAIS: Well, the Under
3 Secretary would be reporting directly to the
4 Secretary. And currently the Assistant Secretary
5 still has the -- the Assistant Secretary of Indian
6 Affairs still would go directly to the Secretary,
7 however there's also the Assistant Secretary of the
8 Department of the Interior. So there is another
9 level.

10 So the Under Secretary as, um, it would be
11 defined by Indian Country would be reporting
12 directly to the Secretary. And it would also be a
13 Secretarial appointee with senatorial confirmation.

14 MR. ROGER TRUDELL: So then the Assistant
15 Secretary of the Bureau of Indian Affairs, where
16 would they fall into the scheme? Because you said
17 you put it right there earlier because you didn't
18 actually know where it would fall? Or do we
19 actually know where it would fall into --

20 MS. CHERYL ANDREWS-MALTAIS: Well, it's an
21 option to be exercised by Indian Country, so it's
22 how Indian Country's leadership would recommend that
23 we, that the Secretary put that position. It
24 doesn't replace -- it doesn't necessarily replace
25 the Assistant Secretary. And it's not a

1 requirement. It's an option that's provided within
2 the statute. So we're looking to you for your
3 guidance on where it should go.

4 MR. ROGER TRUDELL: Okay. Well, I can tell you
5 where it should go, but...

6 (Laughter)

7 MR. ROGER TRUDELL: I say that, then --

8 MS. CHERYL ANDREWS-MALTAIS: But it would be a
9 direct report to the Secretary of the Interior.

10 MR. ROGER TRUDELL: Well, I mean, because it
11 looks like it's being diminished. I mean, and I
12 don't know if that's the intent of the law.
13 Because, you know, as President Steele was saying,
14 you know, now we have to go to -- used to go to one
15 place. You'd go to the superintendent and get all
16 the information and everything you needed. And now
17 you have to go, well, everywhere, I guess. You
18 can't go to one place anymore and get the
19 information that you need.

20 So if this further diminishes the structure of
21 the Bureau, you know, it's going to take the tribes,
22 you know, several years to get caught up and learn
23 the system.

24 Now I know OST, you know, has done a really
25 good job, you know, in my personal opinion, of being

1 able to manage the resources and assets of
2 individual tribal members. They've done a very good
3 job of finding all the lost Indians, probably even
4 the ones that don't want to be found. And that's
5 kind of unfortunate because, you know, if you don't
6 want to be found, then nobody should be able to find
7 you.

8 But I do realize a lot of those tribal people
9 had, you know, large sums of money, you know, that
10 was being held by, in trust and probably had no idea
11 that they had it. So what becomes of that as we
12 process through? Now, does that -- would that fall
13 under the Under Secretary should the tribes say,
14 Establish this Under Secretary position?

15 Are these activities as we know them right now
16 as of today and -- you know, because I hear
17 appraisals will go here and they could possibly go
18 to other places. And, you know, again, it's
19 diluting, you know, the process of the tribes'
20 ability to, um, go to a one-stop service, I guess.
21 You know, and as you continue to do that, it creates
22 more and more barriers for the tribes to actually be
23 informed and be up on the matters that affect
24 tribes.

25 And, you know, the consultation process, it's

1 supposed to be the ability for us tribes to speak
2 and show what that impact would be to us. Well,
3 we're not the largest tribe in the Great Plains, you
4 know, by any means, and we don't have the staff to
5 follow all of these things that are happening. And
6 should they happen and should they take place, then
7 it further diminishes the ability of some of the
8 tribes to be able to get answers and responses to,
9 you know, very serious questions concerning the
10 assets of tribal members as well as the tribe.

11 So as this law -- and it probably has some good
12 points and I just haven't seen them yet. I know
13 there was dissatisfaction with OST when it first
14 came in, you know, and was rejected by the Great
15 Plains. I seen it as an opportunity, I guess, and
16 did offer, you know, office space and that type of
17 stuff for some of the members of OST. And it's been
18 a pretty good relationship.

19 But now if that all changes again, we're -- you
20 know, it's just -- it's always -- I mean, it's
21 really hard for tribes and really hard for tribal
22 leaders to keep up on everything that's going on
23 around them because, you know, you face all of these
24 challenges to trust, challenges to the treaty, all
25 the things that were promised in the treaties. And

1 you heard President Steele say, you know, "As long
2 as the grass grows and the river flows," well, we
3 have about seven dams on the river, I think, and
4 everything that can be paved is being paved, so
5 there's hardly any place for grass to grow anymore.
6 And the trickle of water and the flow of the water
7 is down to a trickle. So we can't really take any
8 more things, any more actions that are going to
9 create us more difficulty.

10 And right now I just see difficulty being
11 created maybe for me as a person, a leader and, you
12 know, I'd just hate to see that. It's like we can
13 never ever keep caught up with all the tricks the
14 government has. And to me, you know, honor the
15 treaties. And they don't have to be trying to trick
16 us all the time if they would just be upfront and
17 honor the treaties. Thank you.

18 MS. CHERYL ANDREWS-MALTAIS: Thank you,
19 Chairman Trudell. And just so that it's clear, I
20 probably wasn't as clear as I should be, but the
21 Under Secretary would be a direct report to the
22 Secretary and nobody in between the Under Secretary
23 and the Secretary of the Interior.

24 And hearing what you're saying about how
25 everything has been compartmentalized and that it

1 doesn't need to be more complicated and it should be
2 more simplified as to tribal leaders' access to
3 decision makers and to following along the process.

4 MR. WILLIAM KINDLE: Good morning. It's nice
5 to have you folks here this morning.

6 I'm William Kindle. I'm the president down at
7 Rosebud. I just have a few comments I wanted to
8 make.

9 You know, back in the middle '90s I think we
10 got word we were going to have a special trust
11 officer at Rosebud. And at the time I was tribal
12 president and I opposed that. I didn't think we
13 needed one because I always thought the
14 superintendent, which is in the treaties, was our
15 trust officer. And that was my simple thinking.
16 But we ended up with a special officer there and a
17 very good man. He worked really well with us. And
18 over the years we've added him to the monthly tribal
19 agenda. We have a report from him every month, and
20 we've worked out a fairly good relationship working
21 with him. So I guess my early thoughts of not
22 having an officer there weren't correct. But we
23 have one now, and it's worked out okay for us.

24 But John mentioned, Mr. Steele mentioned the
25 treaties. And first and foremost we have to keep

1 those in mind. We live by that treaty. We live
2 with that treaty every day. And as John said, "As
3 long as the river flows and the grass grows that
4 treaty will be in existence." So whatever we do
5 with this re-organization, whatever the advantages
6 are going to be and the disadvantages, we have to
7 keep in mind the treaty is there, and we need to
8 look at that.

9 I have some of my tribal land enterprise people
10 here with me today, land management people at
11 Rosebud, and I'm sure they've got some thoughts and
12 questions they would like to share with you all.

13 But before we make that giant step forward, I
14 would like to take a lot of this back to the tribal
15 council at Rosebud and have some discussion from
16 those people as well before we make any final
17 decisions on how this should shake down.

18 I didn't get a chance to meet with the working
19 group yesterday. I understand some of the tribal
20 chairmans had met and may have a position. And I
21 need to get with them to see what that is. But also
22 I'd like for my council back home to take a look at
23 those thoughts and suggestions.

24 So it's my hope that we don't move too quickly
25 here and move off in some direction that's not going

1 to be beneficial to us.

2 So I want to yield the floor here to some of my
3 people from the Tribal Land Enterprise Office if
4 they wish to come up and speak.

5 But, once again, thank you all for coming.
6 Appreciate having you here on the Great Plains.
7 Thank you.

8 MS. CHERYL ANDREWS-MALTAIS: Thank you very
9 much, President Kindle.

10 MR. SHAWN BORDEAUX: Hello. My name is Shawn
11 Bordeaux. I am with the Rosebud Sioux Tribe. I'm
12 employed at Sinte Gleska University as the Director
13 of the Institute of Tribal Lands. I'm in here in my
14 capacity as a Board of Directors member for the
15 Tribal Land Enterprise.

16 At one time Rosebud was the second largest
17 reservation in the country, second only to Navajo
18 Nation at 3.2 million acres. Our tribe began to
19 diminish. We lost a lot of land, and we felt it was
20 important to create a corporation to start trying to
21 remedy the situation of losing the land. And so I
22 have some, a statement here that was prepared by our
23 staff.

24 Tribal Land Enterprise was organized in 1943 to
25 effect a plan to remedy the situation of increasing

1 fractionation of ownership interests in allotted
2 lands resulting from probate procedure, to provide a
3 plan to consolidate individual ownership interest in
4 restricted land in furtherance of economic
5 enterprises, to develop a land management plan for
6 the economic interests of members of the Rosebud
7 Sioux Tribe who participate in this plan, to provide
8 for the preservation and safeguarding of the values
9 in individual ownership equities in land, to provide
10 a simplified process by which an individual may
11 exchange his landholdings for areas adapted to his
12 ambitions or her ambitions for economic enterprise
13 through the flexible use of Certificates of Interest
14 in the Tribal Land Enterprise, to utilize lands
15 under the control of the tribe for the development
16 of economic enterprises within the various
17 communities of Native Americans on the reservation,
18 to provide for an adequate system of keeping records
19 and of accounting in connection with the operation
20 and management of this plan, and to provide a
21 long-term land-buying program which would benefit
22 members of the tribe.

23 The Isolated Tracts Act was given to the
24 Rosebud Sioux Tribe in 1963 to assist the tribe in
25 its continuous efforts and administer the land

1 management plan.

2 The uniqueness of TLE being the only one of its
3 kind in the nation, has risen and is now a
4 multi-million-dollar organization, as the management
5 arm of the Rosebud Sioux Tribe.

6 The Rosebud Sioux Tribe agrees with the
7 comments from the Great Plains Tribal Chairman's
8 Association.

9 We look forward to participate in the
10 Demonstration Project.

11 The Rosebud Sioux Tribe, through TLE, is
12 expanding its horizons to 638 most of the BIA and
13 OST duties and/or programs.

14 Thank you very much.

15 MS. CHERYL ANDREWS-MALTAIS: Thank you. And
16 would you be able to provide us a copy of the
17 statement, if you'd like?

18 MR. BOB FLYING HAWK: Good morning. My name is
19 Bob Flying Hawk. I'm the Chairman for the Yankton
20 Tribe. And again I want to say thank you for being
21 here.

22 I wanted to -- I'm the youngest, the new kid on
23 the Plains here with our leadership, and I wanted to
24 give our elders the opportunity to speak before I
25 did so I could glean from their thoughts what I

1 could share. But I see this as a great opportunity
2 for us. We on the Great Plains and all of us as
3 Natives here in the country have this document
4 before us. And we are living today and we use that
5 to live. And with our grandfather in Washington, he
6 has said, "You will live, and we will continue to
7 help you to live." We have a lot of things that
8 come to us.

9 And as I see this in my leadership, I'm here
10 for the third year at home, but I see it as a child.
11 Most of our families and in our society, in our
12 country, in the world, there's a child who grows
13 more than normal, I guess, so the height is there;
14 the growth is exceedingly quick, and then -- and
15 then there's -- the coordination isn't there. Get a
16 little clumsy sometimes. I run and then I tend to
17 trip. I walk and tend to fall. And so this might
18 be one of those things that I see as our government.
19 And the intent I believe is good and well meant, but
20 it might be growing, morphasizing a little too
21 quick. And that's what we are asking -- that's what
22 I'm seeing personally -- that we slow down a little
23 bit and talk to us a little more and see how this
24 will fit for us, for each of us as tribes, for us as
25 the Great Plains and for the rest of us in our

1 country.

2 Now, we live together. We're growing together.
3 We have a mentality in our words. There's a word
4 called woyukcan. One of our elders out on the
5 Rosebud shared that, that our thinking, that
6 woyukcan is ours. And it is a little different.
7 And the mainstream has that same, the woyukcan, that
8 thought, but it is a different thought. And so we
9 are living together to bring those two thoughts
10 together to, so that we can continue to live.

11 We face a lot of things today. The IHS is one
12 that comes to mind. This water that we are talking
13 about, that we are making a request for is another
14 one. Water is life for all of us as people. But
15 those are some of the things that I see this
16 project, this demonstration project to be thought
17 about. And we are asking that you would allow us
18 and request that we have a little more time to sort
19 these out to get our thoughts together, to share
20 them so that it can be used for us to build our life
21 together and to live together.

22 So I just wanted to share those. Thank you.

23 MS. CHERYL ANDREWS-MALTAIS: Thank you,
24 Chairman Flying Hawk. And just so that -- just as a
25 reminder, we will be continuing to do additional

1 consultation and particularly with the Under
2 Secretary position, those types of structure, all of
3 Section 2 of, part of the ITARA, there will be
4 continuation of consultation and outreach to the
5 tribes and tribal nations.

6 MS. A. GAY KINGMAN: Hello. My name is A. Gay
7 Kingman, and I'm the Executive Director of the Great
8 Plains Tribal Chairman's Association. I'm also a
9 member of the Cheyenne River Sioux Tribe and a
10 landowner.

11 We will be submitting more detailed comments as
12 the Great Plains Tribal Chairman's Association, but
13 we're in general agreement with the creation of the
14 Under Secretary. And we do want to see a higher
15 elevation for Indian Affairs within the Department.

16 And we need -- I guess one of the sections of
17 205, we'd like to see grazing put in there as you
18 consider Section 205 of the law.

19 And the Great Plains tribal leaders would like
20 to be involved in the creation as this new
21 department goes forward. We have a great stake in
22 it because the Great Plains has over 10 million
23 acres of trust land within our region. And of
24 course we constantly say, and President Steele put
25 it very well, that trust relationship or

1 responsibility comes from our treaties, and in the
2 Great Plains we're all treaty tribes.

3 One concern we have was as OST was created, it
4 became a real ballooning agency, and it has spent
5 billions of dollars since it's been created. And
6 we'd like to see a streamlining of that and the
7 functions more integrated with a department or with,
8 under the Under Secretary, and we look forward to
9 working with you on that.

10 The transition plan, we would like to see a
11 timetable on that. And the sooner the better. And
12 as we know, all of us know the elections are
13 looming, and we're already in, going into transition
14 plans.

15 At the same time many of our tribes are looking
16 at contracting or 638ing, and so here again as we
17 look at, that happens, we would like to see some
18 forms or files or, as soon as possible that's in the
19 new legislation. It says applications. We would
20 like to see applications to be made available before
21 the end of at least, if possible, this year, if not
22 as soon as possible.

23 We would like to see a hiring freeze happen
24 within OST as this goes forward, because the funds
25 that we're interested in we'd like to see be put

1 forward towards this effort of consultation,
2 meaningful consultation. And I guess there's such
3 things like Vera and VSIP should be triggered. And
4 we do recommend that certain positions within OST be
5 abolished or integrated within the new agency or new
6 Under Secretary.

7 Let's see, I'll have this finalized and to you
8 by the deadline on Friday. I guess those were the
9 key factors that I had.

10 We had some questions that came up in our
11 meeting on what happens with the IT or the system
12 that we have in place and where will that go? Will
13 it just go under the Under Secretary? Because
14 that's a main part of this.

15 And I guess those were the comments I had
16 today, but I will be submitting these for the record
17 by Friday. Thank you.

18 MS. CHERYL ANDREWS-MALTAIS: Thank you very
19 much, Mrs. Kingman.

20 MS. DEB DuMONTIER: Thank you for those
21 comments, and we look forward to the written
22 submission. Regarding IT, that is an interesting
23 comment because we also have legislation called
24 FITARA, the Federal Information Technology and
25 Acquisition Act which was passed a few years ago,

1 and that is requiring all of us to have direct
2 reporting authority of our IT folks to the highest
3 bureau head. And also part of their performance
4 evaluation will be done by the OCIO, the Chief
5 Information Officer of Interior, as well as all the
6 department governmental agencies across government.
7 So that is going to be an area that we're going to
8 be getting more information and guidance. We've
9 been waiting for the Secretarial order.

10 OST, because of the monies that we manage and
11 how we interface with the BIA system, TAMS, IT is a
12 very critical component of our functions. And that
13 was something that was identified in the functions
14 chart as affecting other bureaus and offices. But
15 thank you for those comments.

16 MR. JOHN YELLOW BIRD STEELE: John Yellow Bird
17 Steele, President of the Oglalas.

18 I'm going to get back to the treaty. I think
19 there should be standards set for this trust office
20 management. And the United States Supreme Court in
21 several cases, called the canons of construction,
22 that the treaties are to be interpreted as the
23 Indians interpret them, that we should have some
24 consultation on these trust, not only assets but
25 trust services that the government is legally

1 obligated to.

2 These treaties were ratified by the Senate,
3 signed by the President, falls into Article VI of
4 the United States Constitution. They're legal
5 obligations.

6 And so in setting up this new department within
7 the United States, the whole of the United States
8 Government has a trust obligation by treaty. But
9 this office is specific with legislation from the
10 Senate and the House to trust asset management. And
11 I say you can't treat Pine Ridge like a rancheria.

12 And so I would like for the consultation to be
13 specific to the treaty. As treaty tribes, there's a
14 legal obligation. And I say again that our
15 relationship with you long knives, we have the
16 ability to go worldwide to show indigenous legal
17 obligations of the government in our relationship,
18 but we don't do it. We try to work with you. Thank
19 you.

20 I have my attorney, Mark Van Norman has a
21 couple of comments on the issue. And he's also a
22 member of the Cheyenne River Sioux Tribe.

23 MR. MARK VAN NORMAN: Thank you, President
24 Steele.

25 I am Mark Van Norman. And, you know, I

1 reviewed the statute, and I appreciate your
2 presentation today. It was informative.

3 You know, the statute doesn't provide a lot of
4 definition of what the Under Secretary is. So I
5 take it that even though you're closing written
6 comments, that this is really about right now the
7 transfer of OST functions within the department, and
8 we need a little bit more discussion, dialogue and
9 fleshing out of the concept of Under Secretary
10 before we can close comments on that --

11 MS. CHERYL ANDREWS-MALTAIS: Correct.

12 MR. MARK VAN NORMAN: -- right? So
13 procedurally.

14 So if you look at this Secretary of State and
15 the Department of State, they have a Deputy
16 Secretary, and the Deputy Secretary is the primary
17 deputy for the Secretary and would take over if the
18 Secretary should pass. And the Under Secretaries
19 are below the Deputy Secretary.

20 If you look at the Department of Agriculture,
21 they have Under Secretaries, and their Under
22 Secretaries almost seem to be the same as Assistant
23 Secretaries in the Department of Interior now.

24 So just saying "Under Secretary" doesn't really
25 provide you a definition. And what's -- the

1 greatest definition that you've got in the statute
2 currently is the fact that there's direct reporting
3 to the Secretary. So you might imagine that this
4 organizational chart would be different than
5 Agriculture or Department of State should the tribes
6 and Interior, you know, determine to go forward with
7 the Under Secretary because it's permissive, right?

8 So you might think that there would be a fork
9 there in your organizational chart, and the Deputy
10 Secretary would be on one side and the Under
11 Secretary would be on the other side and they'd be
12 somewhat equivalent because they're directly
13 reporting to the Secretary. And there's kind of a
14 suggestion in the statute that the Assistant
15 Secretary could move up to become the Under
16 Secretary. Now, that doesn't necessarily say that
17 the position of Assistant Secretary goes away.
18 Maybe the Under Secretary is like the Deputy and
19 there's still an Assistant Secretary and there's the
20 various BIA and BIE and trust responsibilities
21 formed up under the Assistant Secretary and the
22 Under Secretary is higher level policy perhaps. I
23 don't know.

24 I think all of these things need to be
25 discussed. But it needs to be clear that there's a

1 true benefit to moving to the Under Secretary, and
2 that has to be enhanced authority.

3 And we've been running into some problems
4 within the Federal Government in terms of securing
5 the trust responsibility and treaty rights. And
6 most recently we see them with Dakota Access
7 Pipeline. And you have the Army Corps of Engineers
8 really conducting very limited consultation and a
9 hurry-up process on the environment when our tribes
10 own the water in the river. And the oil company is
11 locating just above the Standing Rock Sioux
12 Reservation. But since our water rights come from
13 the treaty, all of our water rights are in common,
14 and they're threatened immediately, you know, by
15 putting something upstream from us that's a
16 potential hazard and yet there's no protection from
17 the Department of Interior, from the Secretary,
18 other than writing a letter. So we were pleased to
19 see that the Secretary and the Attorney General and
20 the Secretary of the Army pulled back on the
21 decision to issue an easement.

22 But there needs to be some kind of process.
23 And if the Under Secretary is really, you know,
24 elevated within the Department so if these
25 cross-agency issues come up, you know, there's an

1 opportunity for better resolution, there's enhanced
2 participation and budgeting, you know, and it's
3 access to greater resources, you know, then it would
4 seem to make sense for the tribes. But I think it
5 has to be clear that there's an intention and a goal
6 to have enhanced performance by the Department of
7 Interior by elevating the Under Secretary so that
8 there is better policy responsiveness, there's
9 better policy budgeting, there's better ability to
10 work across agencies.

11 And I would say that years ago there was the
12 Office of American Indian Trust, and there's a
13 statute for the Office of American Indian Trust.
14 And the Office of American Indian Trust was supposed
15 to perform kind of a cross-cutting function to
16 ensure the enforcement of the trust responsibility
17 among the other Interior agencies. And, you know,
18 Phil Hogan was in that office. Elizabeth Homer was
19 in that office. And, you know, the office I thought
20 functioned, you know, somewhat effectively, but the
21 office, you know, sort of was retired. You know, it
22 would be important to think about whether there will
23 be a revival of that office given these statutory
24 responsibilities and the cross-cutting nature that
25 you're thinking here about dealing with different

1 agencies.

2 So I think this is very good that you're out
3 here because you've got your timelines and you're
4 mandated to do certain things. The Under Secretary
5 is a big policy decision that requires more
6 information about options and details and proposed
7 organizational chart and what, you know, the
8 purpose, goals and effectiveness would be, because I
9 take it the Secretary has broad authority to
10 reorganize the Department.

11 Okay, well, we would hope to hear more about
12 the Under Secretary because it certainly is
13 something with potential.

14 Thank you very much.

15 MS. CHERYL ANDREWS-MALTAIS: Thank you very
16 much, Mr. Van Norman. And we're also doing, or
17 actually it's not led by Indian Affairs, but the
18 Department of the Interior is also leading joint
19 consultations on large infrastructure projects that
20 will address how the structure of consultation will
21 be with those types of projects similar to the
22 pipeline and other ones that are impacting Indian
23 Country, treaty rights and consultation for
24 permitting of these projects, and that has been
25 posted and will continue to post and notify tribal

1 leadership. It's quick turnaround because it's in
2 reaction to the joint statements and the cooperative
3 nature of pulling back the permitting and hitting
4 the pause button on the particular project.

5 MR. MARK VAN NORMAN: And we're appreciative of
6 that, and we're, you know, I think we're planning to
7 attend and participate in that. And we're also
8 hoping to have a direct dialogue with, from our
9 Sioux Nation Tribes with the Secretary's
10 representative and the Attorney General and the
11 Secretary of the Army's representative because we
12 feel that this easement, issuance of an easement
13 under the river is a major federal action because of
14 its potential impact on water quality.

15 And I think you can go to the movies and watch
16 that Deep Water Horizon movie that's in the theaters
17 and say, Yeah, well, it's good to have fail-safe
18 technology but when the fail-safe technology fails,
19 then you're in trouble. So that's very important to
20 us for the water quality.

21 And, you know, you have a 2014 Secretarial
22 order that says that the Department is going to
23 protect trust resources. So then you end up in a
24 situation where you have different agencies with
25 different federal law requirements, and somehow the

1 agencies are needing to coordinate, so as President
2 Steele was saying, the treaties, and Chairman
3 Trudell was saying, the treaties are honored,
4 because here we are, our water is a treaty resource,
5 and there's a policy to protect that. But what
6 about when it's the other agency that's going to
7 take action to our detriment that hasn't had the
8 time to have a pipeline engineer talk to us about
9 safety, that hasn't, you know, put these things in
10 place? So we need -- we need this Under Secretary
11 position to really have teeth and to be able to go
12 across the cabinet of all agencies.

13 So thank you.

14 MR. JOHN YELLOW BIRD STEELE: John Yellow Bird
15 Steele, Pine Ridge, Oglala Sioux.

16 I've got an upcoming project, and I believe the
17 Federal Government has a trust responsibility to the
18 Oglalas and all of us in this area.

19 Edgemont, South Dakota, we're in the watershed
20 of Edgemont. It's in the Black Hills. We're
21 downwind of it. Of no national interest, a Chinese
22 company is coming in to in situ leach mine uranium.
23 In situ is just like fracking. They're going to
24 make footing underground there and then suck it out.
25 When they get it up, we're going to have large,

1 large ponds of toxic water that they're going to try
2 and reinject back into the center of the earth. I'm
3 dealing with the EPA on this, and I believe the
4 Federal Government has a trust responsibility to us
5 to protect our future.

6 The EPA has permitting authority for all
7 underground water. The state has permitting
8 authority for all surface water. The Nuclear
9 Regulatory Agency has permitting authority for the
10 whole operation. Somehow we've got to incorporate
11 such endeavors into this new trust department to
12 help tribal governments to show that the EPA itself
13 is not big enough to handle its own responsibilities
14 after the mining starts. They gotta monitor those
15 re-injection wells, 4,000 of them, yet they had the
16 permitting authority. I think there's a big
17 conflict of interest there. And the Federal
18 Government needs to step in and help us.

19 Thank you.

20 MS. CHERYL ANDREWS-MALTAIS: Thank you again.

21 Would folks like to take a short 15-minute
22 break, stretch your legs, reconfirm, and we can
23 reconvene if there are any other questions or
24 comments?

25 (Recess taken from 11:00 a.m. to 11:30 a.m.)

1 MS. CHERYL ANDREWS-MALTAIS: I'd like to regain
2 our seats and reconvene to see if there are any
3 additional comments, suggestions, ideas that we can
4 take down before we conclude and bring this
5 information back to synthesize it and put it into --
6 put it into the organization so that we can respond
7 back appropriately.

8 And, again, I'd like to, on behalf of our
9 panel, Deb, John and myself and the rest of our
10 federal partners that are here, thank you so very
11 much for investing the time and energy and sharing
12 your comments and thoughts and your wisdom as to how
13 we can proceed to better meet the needs of Indian
14 Country. And, again, I invite anybody that has any
15 additional questions, concerns, comments or ideas up
16 to share them with us so that we can get to getting
17 everybody back to where they need to be to continue
18 the business of either helping lead your tribal --
19 lead your tribe or perform the functions to help
20 support your tribes.

21 MR. EVERETT BAXTER, JR.: Good morning,
22 everybody. My name is Everett Baxter. I am with
23 the Omaha Tribe of Nebraska. Unfortunately our
24 chairman could not make it here to this meeting, but
25 I was given a script, and we have our comments in

1 regards to the Indian Trust Asset Management
2 Demonstration Act 2016.

3 The Omaha more than recognize the need for
4 trust form. Indeed the tribe was one of the main
5 tribes that has sued the Department of the Interior
6 for mismanagement of their trust assets in the Omaha
7 Tribe versus Salazar. We claim the government
8 mismanaged and incorrectly accounted for the income
9 from our tribal trust assets. We settled that case
10 for monetary damages in 2012 but believe further
11 reform is necessary.

12 We understand that the Indian Trust Asset
13 Management Demonstration Project Act of 2016
14 requires the Secretary of the Department of the
15 Interior to submit a report that will include a
16 transition plan and a timetable for the termination
17 of OST within two years of the report or why a
18 transition cannot be completed in that time frame
19 and an alternate date. We believe that timetable
20 should be as aggressive as possible.

21 There is a need for greater efficiency in the
22 trust resource management system, better economic
23 returns on trust resources and, above all, an
24 increased tribal voice in how the trust is
25 administrated. For example, nearly every trust

1 transaction requires an appraisal from the Office of
2 Special Trustees, and this is the most significant
3 bottleneck of the trust system.

4 We understand, through tribal consultation,
5 that the DOI will consolidate the appraisal and
6 valuation processes under a single administrative
7 entity under the DOI, as well as an establishment of
8 minimum qualifications to prepare appraisals and
9 evaluations of Indian trust property.

10 So currently to request an appraisal, the Omaha
11 Tribe's realty office will send a request for
12 appraisal services to the Office of Special Trustee
13 for American Indians. That appraisal request
14 identifies specific items to be addressed in the
15 appraisal, such as the transition type: Lease,
16 sale, exchange, rights-of-way, et cetera; property
17 types: Agricultural, residential, commercial,
18 industrial, recreational, et cetera -- property
19 type: Agricultural, residential, commercial,
20 industrial, recreational and et cetera, and whether
21 there are utilities present, of which kind.

22 If there are no problems with the requests, and
23 this is often where the bottleneck begins, OST will
24 forward the request either to an in-house appraiser
25 or to a contract appraiser.

1 When a contractor receives an appraisal
2 request, he or she must prepare a statement of work
3 and submit it to OST for consideration, another
4 bottleneck.

5 Once a contract for the appraisal is awarded,
6 the appraiser can begin the appraisal process which
7 he or she is required to complete within 90 days.

8 When the appraisal is complete, the appraiser
9 submits it to the Office of Appraisal Services which
10 is overseen by OST for review and final approval.

11 In sum, the appraisal process is full of red
12 tape, and it must be streamlined by taking measures
13 such as removing OST from the process, moving it to
14 the regional level and using multi-year appraisal
15 contracts for our regions, not just the Midwest, in
16 order to reduce the amount of time it takes to get
17 an appraisal completed by eliminating the need to
18 advertise and award a separate contract for each
19 appraisal. This also eliminates the need to develop
20 a statement of work for each contract and have it
21 reviewed.

22 Now, my role for the tribe is I'm the Director
23 of Land Management and, you know, I work with a
24 number of projects. And so, you know, when we talk
25 about funding to what I do is I'm a lone wolf when

1 it comes to all of our business that we do. I
2 handle leases; I handle trespassing. You know,
3 anything that involves land, I do. And my funding
4 is not very much. I think last year I was awarded
5 54 grand, and basically that's not enough to handle
6 any help. I am secretary; I am field tech, and I am
7 the boss. So as you can see, I have one hell of a
8 party.

9 So, you know, one of the issues that I've had
10 with going through this is we are currently going
11 through the Land Buy-Back Program, and one of the
12 things I'm noticing, and it does come from OST, is
13 why is the rate for appraisal better for the Land
14 Buy-Back Program versus all other requests?

15 So, again, in the material that was presented
16 it states that, you know, when we have an appraiser
17 date, we must select them. They must have a good
18 standing with the state or, you know, just like it
19 was mentioned earlier, if it's in the tribal code or
20 not.

21 So, in essence, the person that we find is most
22 likely already contracted through the Office of the
23 Appraisal System or their office, so why does it
24 have to go that way? I mean, why does things always
25 have to take forever from the appraisal services?

1 So the current request now: So when we go
2 through our trespassing clauses, why must we have to
3 wait? I mean, it's almost discouraging to get an
4 appraisal from OST. You know, we have a trespassing
5 case and we have to wait months just to get an
6 appraisal for damages, and it really limits our
7 actions what we can do.

8 You know, I come here today -- when I heard
9 about this, this is my first time ever hearing about
10 these type of meetings we have.

11 And, you know, just as we go along here, I want
12 to say I was once a federal employee for the Bureau
13 of Indian Affairs for four years and, you know, I
14 look at some of the charts here that was given in
15 our material and where I ranked was probably about
16 three or four organizational charts ahead and I
17 would be at the bottom. Even then I felt I did a
18 lot for the tribe. And, you know, now that I left
19 federal service and now I work for the tribe and,
20 you know, now it's switching sides.

21 So, you know, I would just like to get some
22 more questions from our appraisal people. And I
23 just need to know why it takes a little bit longer
24 and why is the Land Buy Back so quick and efficient
25 compared to, you know, any other time that we have

1 issues going on?

2 So that's about as much time as I'm going to
3 take up today. Thank you.

4 MS. CHERYL ANDREWS-MALTAIS: Well, seeing or
5 hearing no other comments or anything, I'd like to
6 thank you all again, and we can conclude this
7 consultation session. And I wish everybody safe
8 journeys home and good health and happiness to your
9 communities.

10 And if you'd like any extra binders, there are
11 plenty at the back table. Please feel free to bring
12 some home, share them with your other counterparts
13 back home, as well as the people that might be
14 handling your land management.

15 And also the information as far as sending your
16 comments is up behind us, and please feel free to
17 send in any of your comments. And we will be
18 reaching out with the additional consultation for
19 the Under Secretary or the Section Part 2 component
20 very soon. So hopefully we'll see a lot of the same
21 faces and others at our next round of consultations.

22 Thank you very much.

23 * * * * *

24 (The proceedings concluded at 11:41 a.m.,
25 October 4, 2016.)

1 STATE OF SOUTH DAKOTA)
2) ss.
3 COUNTY OF PENNINGTON)
4

5 I, CINDY K. PFINGSTON, hereby certify that
6 the foregoing pages numbered from 1 to 72, inclusive,
7 constitute a full, true and accurate record of the
8 proceedings had in the above matter, all done to the best
9 of my skill and ability.

10 DATED this 24th day of October, 2016.
11

12 _____
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14 CINDY K. PFINGSTON
15 Registered Professional Reporter
16

17 My commission expires:
18 February 4, 2022
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